(1)

01-1131

No.

Supreme Court U.S.
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In The

Supreme Court of the United States

LEONIDA LIDMAN, PRO SE

V.

BRENDA SMITH ET AL

On Petition For Writ of Certiorari To The UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petition for Writ of Certiorari

MY NAME: LEONIDA LIDMAN PRO SE

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12 pp

QUESTIONS PRESENTED

1. Whether the U.S. Third Circuit Court of Appeals Judgment and Opinion (APPENDIX: A) and Mandates (APPENDICES: A-1; A-1(a); A-1(b); A-1(c) shows abuse of discretion unfairly and erroneously decided petitioner's APPEAL, CA: 00-2122 in favor of persons and agencies who are not named as defendants and on issues that were not raised against them in the Motion Brief To Reinstate, CA: 83-3747 and in the Informal Appeal Brief, CA: 00—2122 ?

2. Whether the U.S. Third Circuit of Appeals Judgment and Opinion (APPENDIX: A) and Mandates are flawed, unfair and irregular and therefore, an "exceptional circumstance" and a "meritorious reason" to grant this Petition?

3. Whether the U.S. Third Circuit Court of Appeals Judgment and Opinion in favor of the wrong persons and agencies on issues that were not raised against them indicate the issues and claims about Philip Lago's gross errors and severe negligence due to his failure to file timely motions to amend the federal action remain unheard and undecided pursuant to Federal Rule of Procedures 6o (b) (6)?

4. Whether the U.S. Third Circuit Court of Appeals Judgment and Opinion and Mandates indicate that due to Philip Lago's repeated failures to file timely motions to amend the federal action 83-3747 indicate that the issues and claims against Judge Milton Buck, Mr. Richard Proctor and the Newark Redevelopment and Housing Authority of violating petitioner' civil and constitutional rights remain intact, unheard and un-adjudicated which is a reason to grant this Petition?

5. Whether the U.S. Third Circuit Court of Appeals in denying petitioner's Appeal, CA: 00-2122 pursuant to Federal Rule of Civil Procedure 60 (b) (6) that petitioner had met the U.S. District Court' requirement that movant has to provide (1) a meritotious reason; (2) exceptional circumstance or (3) extreme hardship exhibited conflict with the Third Circuit decision in Case Bougher vs. Secretary of Health and Welfare, United States of America, 577 F 2d (3rd. Circ. 1978) and in the-Case of Sawka v. Healtheast, Inc. 989 F 2d 138, 140 (3rd Cir. 1993) to warrant granting this Petition?

6. Whether the U.S. Third Circuit Court of Appeals in denying CA: 00—2122 pursuant to Federal Rule of Civil Procedure 60 (b) (6) exhibited conflict with decision of other court of appeals as in the case of Cobos v. Adelphi University, 179 F.R.D at 288 (quoting, United States v. Cirami, 563 F 2d 26, 3O, (2nd Cir. 1977)?

7. Whether the Judgment and Opinion (APPENDIX: A, page 9, last 2 sentences) granting Appellee's Motion To Supplement the Record should be reversed because the petitioner did not receive any documents; information, motion brief about said Motion To supplement the Record from the appellee and thus, petitioner was denied her right to know what said motion was about and to respond.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[xx] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Judge Milton Buck,
Mr. Richard Proctor and
The Newark Redevelopment and Housing Authority (NRAA)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[xx] For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix . A to the petition and INCLUDE MANDATES: APPENDICES A-1; A-1(a),A-1(b) and A—l(c) and is,/are

[ ] reported at _____ or;
[ ] has been designated for publication but is not yet reported; or, [xx] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[xx] is unpublished.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[xx] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 20, 2001

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ and a copy of the order denying rehearing appears at Appendix ____

[xx] **An** extension of time to file the petition for a writ of certiorari was granted **to and including** from August 29. 2000 (date) on 60 days from (date) . **in Application No. A this date, U.S Supreme Court** (letter attached) as APPENDIX C:

[xx] A second extension to refile the petition for Writ of Certiorari was granted for 60 days from Oct. 15, 2001 (U.S. Supreme Court, letter attached in the Exhibits Section.)

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from state courts:

The date on which the highest state court decided my case was _____ A copy of that decision appears at Appendix _____

[ ]A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Abuse of Discretion. Whether the U.S. Third Circuit abused its discretion and authority when Court denied APPEAL, CA: 00-`122 in favor of persons and agencies who were not named as defendants to be reinstated on issues raised in the Motion To Reinstate, CA: 83—3747 and in the Informal Appeal Brief, 00-2122 (APPENDIX: A)

2. Right to a fair and full hearing. Whether the Third Circuit Court of Appeals Judgment and Opinion (APPENDIX: A) in favor of - the wrong persons and agencies on issues that were not raised against them indicate petitioner was denied a full and fair hearing on:

a. issues and claims about Philip Lago's gross errors and severe negligence pursuant to Rule 60 (b) (6)?

b. the claims against Milton Buck, Richard Proctor and the Newark Housing Authority violations of petitioners' Civil rights and constitutional rights?

3. Federal Rule Of Civil Procedure 60 (b) (6) which has no time limit and which provides relief for any reason justifying relief to accomplish justice.

4. Title VII of the Civil Rights Act of 1964 which prohibits employment discrimination on the basis of race, national origin and retaliation

5. Violations of petitioner' free speech guaranteed by the First Amendment in violation of 42 U.S.C 1983 and Section 1985 (3).

STATEMENT OF THE CASE

1. On Oct. 15, 1999, petitioner filed a Motion to Reinstate Civil Action # 83-3747 pursuant to Federal Rule of Civil Procedure 60 (b) (6) for any reason justifying relief to accomplish justice due to gross errors and severe negligence of Philip Lago, legal counsel of petitioner.

2. This Motion to Reinstate is a move to reinstate only Judge Milton Buck, former executive director and Mr. Richard Proctor, former personnel director in their official capacities and the Newark Redevelopment and Housing Authority (NRHA) as respondeat superior and (2) to reopen CA: 83-3747 only on the issues that arose out of the denial of permanent appointment to petitioner under the 1984 Civil Service Certification as a (a) retaliation against petitioner for exercising protected activity of having filed a civil action in 1983 in violation of free speech guaranteed by the First Amendment in violation of 42 U.S.C. 1983 and Section 1985 (3) and (b) motivated by racial animus against petitioner who is a naturalized Filipino-American, of the Brown race and married to a White American male. These acts of the two officials are prohibited by Title VII of the Civil Rights Act of 1964. Prima Facie evidence of employment decisions these two officials made are permanent appointments of " Black employees only" in 1984; 1985; 1986 from both "complete" and "incomplete" civil service certification lists namely: Permanent Appointments from Incomplete Certification lists, No. 1; No. 2; No. 3; No. 4 and No. 5 and Permanent Appointments from Complete Certification Lists No. 1; No. 2; No. 3; No. 4; No. 5 and No. 6 as submitted in Motions Brief to Reinstate page 5-A; page 6 lines 1—4; page 6 at No. 6; pages 7; and 8; and 17; and in the Informal Appeal Brief, CA: 00—2122 (3rd Cir), on July 17, 2000, Statement of Facts, pages 3; 4; and 5.

3. On June 29, 2000, the U.S. District Court denied Motion To Reinstate, CA: 83-3747 (APPENDIX: B).

4. On July 17, 2000, petitioner filed an Appeal to the U.S. Third Circuit of Appeals. This Appeal was docketed as CA: 00-2122 and denied on June 20, 2001 A JUDGMENT AND OPINION (APPENDIX: A) and MANDATES (APPENDICES A-1; A-1(a); A-1 (b); A-1(c) were issued on July 12, 2001.

5. On August 29, 2001, the U.S. Supreme Court granted 60 days extension to file this Petition (APPENDIX: C)

Petitioner' Response To the U.S. Third Circuit Court of Appeals Judgment and Opinion, CA: 00-2122, June 20, 2001, (APPENDIX: A)

1. Circuit Court's Opinion, APPENDIX: A, Statement of Facts, page 2 at lines 1 thru 9 is incorporated herein to avoid repetition.

Petitioner' Response: The U.S. 3rd Circuit Court failed to mention that the suit filed by this petitioner in 1983 and decided in March 1987 pertained to the claims on issues that arose out of the denial of permanent appointment under the 1982 Civil Service Certification. On this issue, the District Court granted the summary judgment motion of Judge Milton Buck and the Newark Redevelopment and Housing Authority on Nov. 21, 1985 (CA: 00—2122, Opinion, page 2 at lines 3—4 and P1. Exh: 12, page 11 at No. IV). Richard Proctor was granted a directed verdict on the 1982 Certification by the District Court (P1. Exh: 7, Civil Docket Sheet, 3-26-87, NR; and CA: 00-2122 Opinion, lines 5-6. A Judgment was entered in favor of Brenda Smith and Dr. Daniel Blue on May 20, 1987 (P1. Exh: 101) on unrelated issues.

2. Opinion on line 10, October 27, 1999 should be corrected to read, October 15, 1999 (see attached court stamped date of filing of Motion To Reinstate, CA: 83—3747)

-2403. Opinion at line 11: re: pro se motion to vacate the judgment under Federal Rule of Civil Procedure 60 (b).

Response: Pro Se motion to reinstate was filed pursuant to Federal Rule of Civil Procedure 60 (b) (6)

This motion to reinstate is not an appeal to vacate the final judgment of the district court entered in favor of the original/former defendants on the issue that arose out of the 1982 Civil Service Certification. The former defendants dismissed as shown in the Civil Docket Sheets, P1. Exh: 7 were: the City of Newark, on 1-12-84, NR 11; the president of N.J. Civil Service Commission, on 3-1-85, NR 59; Judge Milton Buck and the Newark Redevelopment Housing Authority, on 11-21-85, NR 92; Richard Proctor on directed verdict 3-26-87, NR and a final judgment in favor of Brenda Smith and Daniel Blue on May 20, 1987 (P1. Exh: 101).

These facts were explained and documented in the Informal Appeal Brief, CA 00-2122, Statement of the Case, pages 1-2; Statement of Facts, Letter B, page 2 and 3 thru page 6 which petitioner is incorporating herein to avoid repetition. These information were also submitted in the Motion Brief to Reinstate, CA: 83—3747

4. 3rd Circuit Opinion, page 2, line 12 and page 3 line 1 thru 12 is being incorporated here to avoid repetition.

Response: As documented in Motion Brief to Reinstate, this motion is a motion to reopen this Case 83—3747 to reinstate Judge Milton Buck, Richard Proctor in

their official capacities and the Newark Redevelopment and Housing Authority on the issues that arose out of the 1984 Civil Service Certification due to gross errors and severe negligence of Philip Lago in failing time after time for (12) times to file timely motions after these persons were dismissed on the 1982 Civil Service Certification claims and while the federal action was pending at the district court. The gross errors and severe negligence of Philip Lago pertains to (A) Those events that occurred before discovery ended in the federal action on June 15, 1985 (see Motion Brief to Reinstate, pages 5-A thru page 16 as well as (B) Those events that occurred after discovery ended on June 15, 1985 (P1. Exh: 10, page 2, parag. 5) but before the trial of the Federal Action in 1987. (see Informal Appeal Brief, CA: 00–2122, page 7 thru page 15, Statement of Facts which plaintiff is incorporating herein to avoid repetition).

II. Petitioner' Response to 3rd Circuit Court Judgment (APPENDIX: A) and MANDATES APPENDICES, A-I; A1 (a); A-1(b); A-1(c), As to The Defendants.

Response: The U.S. 3rd Circuit Court of Appeals in denying petitioner's motion to reinstate substituted defendants with other persons and agencies whom petitioner did not name as defendants in this motion to reinstate and who/which were not involved on the issues that arose out of the gross errors and negligence of Philip Lago to file timely motions to amend the federal action on the basis of the 1984 Civil Service Certification with the exception of Richard Proctor. As explained on page 3 and 4 of this Petition, these people and agencies the U.S. 3rd Circuit revived and substituted as defendants were dismissed on various occasions under the 1982 Civil Service Certification claims.

The two persons petitioner moved to be reinstated in the motion are Judge Milton Buck and Richard Proctor in their official capacities and the Newark Redevelopment and

Housing Authority as respondeat superior as shown in the Motion Brief, CA: 83-3747 filed October 15, 1999 spelled out in Court stamped cover page and on pages 1 and 2, U.S. District Court Opinion and Order, (APPENDIX: B).

Even though the names of the defendants in the Motion to Reinstate were clearly spelled out, the U.S. 3rd Circuit revived defendants in the former claims under the 1982 Certification and decided the claims on the issues that arose out of the 1984 Civil Service Certification in their favor even though petitioner did not move to have them reinstated. In addition, the U.S. 3rd Circuit issues a Mandate against petitioner on behalf of these non defendant persons and agencies urging them to write the U.S. District Court to make the judgment as to costs to become a mandate.

Petitioner respectfully submits:

I. Whether the U.S. 3rd Circuit on June 20, 2001 issued Judgment and Opinion (APPENDIX-: A) and Mandates (A-I; A—1(a), A—l(b); A—1(c) that are unfair, flawed, wrongful, erroneous in favor of persons and agencies who were not named defendants and on issues that were not raised against them to warrant the granting of this Petition for Writ of Certiorari?

2. Whether the U.S. 3rd Circuit Court Opinion and Mandates indicate that the issues submitted in Motion to Reinstate based on the gross errors and severe negligence of Philip Lago in failing to file timely motions to amend the federal action (12) times to reinstate Judge Milton Buck, Richard Proctor and the NRHA on violations of petitioners free speech rights and employment discrimination under the 1984 Civil Service Certification remain intact and undecided to warrant the granting of this Petition?

3. Whether the U.S. 3rd Circuit Court Judgment and Opinion and Mandates because they are unfair, flawed, in

error is an "exceptional circumstance" and/or "meritorious reason" to grant this Petition for Writ of Certiorari?

III. Petitioner' Response To U.S. Third Circuit Courts' Opinion (APPENDIX: A) page 6 at lines 8-9 that the " the loss of Civil Service Employment is not Extreme Hardship under Rule 60 (b) (6)

Response: The words used in the Opinion (APPENDIX: B) U.S.District Court page 4 at lines 1 thru 5 that, " because the scope of Rule 60 (b) (6) is potentially broad relief is justifiable only when the movant shows, " exceptional circumstance" (or) extreme hardship" citing Cobos, 179 F.R.D. at 288 (quoting United States v. Cirami), 80 F 3d 874, 877 (7th Cir.)

Petitioner incorporates herein the detailed responses to the U.S. District Courts' Opinion above in (APPENDIX: B) which petitioner submitted in the Informal Appeal Brief, CA: 00-2122 , pages 15 thru 19 U.S. 3rd Circuit of Appeals to avoid repetition.

The summary of extreme hardship brought about by Philip Lago's gross errors and severe negligence in failing time after time for (12) times to amend the federal action while Complaint CA: 83-3747 was pending included: (1) nerve shocking losses at the District Court and at the State Court; (2) traumatizing mental and psychological pain; (3) financial difficulties in meeting obligations to credit card companies; doctors and hospital bills due to loss of regular income; (4) loss of health and medical insurance benefits; (5) inability to assist children who were in college with some of their college expenses; (6) loss of employment one month after the federal action was tried which led to dehumanizing loss of self esteem and social alienation; (7) impairment of employability and loss of a career in the public sector and most of all the loss of civil and constitutional rights; (8) the attendant daily stress carrying these burdens that led to

hospitalization and constant doctor' care; and (1) foreclosure of petitioner's civil and constitutional rights that haunt her to these very days.

In light of the fact that Philip Lago is a professional, a barrister admitted to practice law in both the State of New Jersey and New York State, are his errors and neglect in in failing to file timely motions to amend the federal action time after time for twelve (12) times, which brought severe mental, psychological and financial hardship to petitioner mere "inadvertence"; "a simple mistake" an "ordinary mistake" (APPENDIX: A page 5 at line 6) or are those gross errors and severe negligence?

Petitioner believes she meets the (Or) extreme hardship" the District Court called this movant to provide. 7 Moore Federal Practice, 60.27, page 352 et. seq, which held that, " relief maybe granted to accomplish justice, which should be liberally applied. In Cobos v. Adelphi University 179 F.R.D. at 288 with the U.S. District Court, quoting United States v. Cirami) 563 F 2d 26, 30 and no less than the U.S. 3rd Circuit held that "failure to file timely motions as " negligence" and " and careless disregards of the clients rights amounting to leaving the client unrepresented" In yet another 3rd Circuit Court Case, Leon Bougher v. Secretary of Health and Welfare, United States of America, 572 F 2d (3rd Cir. 1979), Circuit Judge Clarkson Fisher held that Rule 60 (b) (6) motion for any reason justifying relief to accomplish justice maybe granted where lawyer did not file timely motions and where records before the court did not show "inadvertence" or "excusable neglect".

IV Petitioner' Response to U.S. District Court' Opinion (APPENDIX: B) and affirmed by the U.S. Third Circuit Court (APPENDIX: A)

Opinions:

1. The gravaman of Lidman' Motion to Reinstate Civil Action 83-3747 was due to Philip Lago's failure to mention in the Amended Complaint the Newark Redevelopment and Housing Authority (NRHA) refusal to appoint petitioner under the 1984 Civil Service Certification (Opinion, APPENDIX: B, page 2 at lines 1—4 and page 5, lines 1-4 which the District Court considered:

(a) " mistake" ; " inadvertence" (APPENDIX: B, page 5 lines 6 under Rule 60 (b) (1) and,

(b) governed by the one-year statutory period (APPENDIX: B; page 5 at 4—6) and,

(c) this Motion was not brought within a reasonable time (APPENDIX: B, page 5, lines 10—12)

Response to Opinion IV (1)

The gravaman or the core of petitioners' Motion To Reinstate is Attorney Lago's many errors and negligence that were so gross and severe in failing to file timely motions (12) times or more, if the errors he made in filing a State Action are counted, to amend the federal action while Complaint CA: 83-3747 was pending to reinstate Judge Buck and Mr. Richard Proctor and the NRHA on claims of (a) retaliation against petitioner's exercise of protected conduct of having filed a court complaint which is her free speech right guaranteed by the First Amendment and (b) racial animus against petitioner, who is non-White, non-Black in their employment decision of denying permanent appointments mandated under the 1984 Certification; demoting her to temporary status without change in job functions while permanent appointments of "Black

employees only" were made in 1984; 1985; 1986 from both "Incomplete" and "Complete" Civil Service Certifications as shown by the appointments presented to the District Court and to the U.S. Third Circuit Court, (P1. Exhs; Appointments from Incomplete Lists No. 1; No. 2; No. 3; No. 4; No. 5 and PL. Exh: Appointments from Complete Civil Service Certifications No. 1; No. No. 2; No. 3; No. 4; No. 5; No. 6 submitted in Motion Brief and in CA: 00-2122, Informal Appeal Brief, page 3.

Petitioner's Response to Opinion IV No. 1 (a)

Whether the following incidents demonstrated gross errors and severe negligence by Philip Lago in failing time after time to file timely motions to amend the federal action while it was pending at the District Court and before the expiration of the Pre-Trial Order of Magistrate Haneke ending discovery June 15, 1985? ('Pl. Exh: 10) Motion To Reinstate CA: 83-3747, page 9 and CA: 00—2122, Informal Appeal Brief, page 11, No. 9; page 12 at No. 13 (a) quoting from Philip Lago's Affidavit, P1. Exh: No. 25.

1. The New Jersey Civil Service promulgated the 1984 Civil Service Certification which ranked petitioner the No. 1 certified eligible for permanent appointment under this " Complete Certification List. (P1. Exh: No. 5), Motion Brief, page 5—A; CA: 00—2122, page 3.

2. New Jersey Statute, N.J 11-12-16 held that the statutory rule of three authorizes the appointing authority to appoint "one of the three" certified (as) standing highest among the candidates for appointment. (Motion Brief, page 5-A; CA: 00-2122, Informal Appeal Brief, page 4. Also, N.J.S.A 11-22-16; N.J. 11-10-3; N.J.S.A. 10.6 and N.J. 11A:4-8 on page 15, last paragraph of CA: 00—2122.

3. Instead of granting permanent appointment, Judge Buck and Mr. Proctor abolished petitioner's position,

Program Coordinator, Office on Aging on February 5, 1985 (P1. Exh: No. 8) and assigned her to temporary position. (Motion Brief, CA: 83-3747, page 6 at No. 6; CA: 00-2122, Informal Appeal Brief, page 4, parag. 5 while permanent appointment were granted to "Black employees only" in 1984; 1985 and 1986.

4. Philip Lago advised petitioner he will file a motion to amend to include the 1984 Certification and abolishment of the program coordinator position. He did not.

There is no record in the Civil Docket Sheet of CA: 83-3747 showing any amendment was made. Instead, Lago filed a separate State Action No. 38270-86 against petitioner' wishes. During the pretrial in the State Action 38270—86 on Nov. 10, 1988, Philip Lago under oath knowingly and falsely told Judge Carol Ferentz that (1) in 1985 he had insufficient information to substantiate a claim under the 1984 Civil Service Certification and (2)that he was precluded from filing these claims due to Magistrate Haneke' Pre-Trial Order and (3) wrongfully claimed that petitioner had no entitlement to permanent appointment under the 1984 Certification and (4) that petitioner had no claim of deprivation of property interest in the 1984 Certification. (P1. Exh: 25, submitted in the Motion Brief to Reinstate, CA: 83—3747, pages 21 and 22 and in the Informal Appeal Brief, CA: 00-2122, page 12 at No. 13. These claims are contrary to the record.

These five errors of Philip Lago were so gross and so wrong and without any justification which pointed to his failure to file timely motions to amend and his negligence of obligations to petitioner.

5. On January 25, 1985 as recorded in the U.S. District Court Transcript (P1. Exh: No. 9), Lago conducted oral deposition of Barbara Gilsenan, supervising clerk, NRHA and Richard Proctor. The District Court transcript

revealed Gilsenan testified about a (1) more recent certification (page 36 line 1) and (2) that was returned no vacancies (page 36, lines 18) and (3) that Lidman's title was changed to social worker (page 36 lines 20—21 and (4) the authorization came from Judge Buck (page 37, lines 12-15 submitted in Motion Brief, pages 7-8.

6. Lago even confirmed in his Opposition Brief in the State Action, 38270 (P1. Exh: 25, page 4 at line 4) that the "date of oral deposition of Gilsenan and Proctor was before February 4, 1985.

7. Philip Lago had more than four (4) months to amend the Federal Action 83-3747 from January 25, 1985 to June 15, 1985 to meet the pre-trial deadline set in Judge Haneke's Pre-Trial Order (P1. Exh: 10) but he did not. He again, for the sixth time neglected his legal obligations and failed to file timely motions to amend (P1. Motion Brief, CA: 83-3747, pages 7-10; Informal Appeal Brief, CA: 00-2122 page 7 at No. 2, page 8 at No. 4.

8. On May 30, 1985, Philip Lago conducted oral deposition of Judge Milton Buck (P1. Exh: 11, U.S. District Court Transcript, cover page,) which revealed Judge Buck's testimonies and date:

P1. Exh: 11, lines 18-19:

Question: are you aware of Mrs Lidman' job reclassification in January of this year?

line 20: Answer: Yes.

line 21: Question. Yes?

line 22: Answer. Yes.

line 23: Question: Were you involved at all that a job change should be made?

line 25: Answer: Yes.

9. The Milton Buck deposition on May 30, 1985 was fifteen days before the Pre-Trial Order of Judge Haneke (P1. Exh: 10, page 2, parag. 5) but Lago for the seventh time failed again to file timely motion to amend the federal action to reinstate Milton Buck and the NRHA.

10. On November 21, 1985, the District Court granted the summary judgment motion of Judge Milton Buck and the NRHA (P1. Exh: 12, page 11 at IV; CA: OO-2122,page 2 at line 3) where Judge Bissell held:

"plaintiff failed to produce facts to show defendant Buck was involved in the determination not to give the appointment she sought"

11. Would the District Court arrived at this Pre-Trial Opinion had Philip Lago filed timely motions to amend CA: 83–3747 to include- claims against Judge Buck for his role in denying permanent appointment under the 1984 Certification which Buck admitted under oath at his deposition testimonies?

12. Would petitioner prevail in her claims of racial animus in employment decisions of Judge Buck and Mr. Proctor had Lago filed timely motion to amend and research this issue by demanding information on permanent appointments these officials made in 1984, 1985 and 1986 from the NRHA and or from the Civil Service Commission? He could have requested a Court Order to release these information - a privilege that he, as a legal counsel can demand as evidence in the court proceeding as new discovered evidence. He did not even try. Lay person like petitioner can not demand this from the court when she is

represented by counsel as I learned years later. Lago failed in his legal obligations once more for the eighth time.

13. While the Federal Action 83-3747 was pending, the N.J. Civil Service Commission conducted a desk audit of petitioner' job functions (P1. Exh: 16) and determined on February 25, 1986 (P1. Exh: 17) that (a) plaintiff's position was improperly classified to social worker and (b) as a result of the audit, the N.J. Civil Service reinstated the position Program Coordinator, Office on Aging and authorized the permanent appointment of plaintiff (Motion Brief, page 17; informal Appeal Brief, CA: 00-2122, page 10).

14. In a letter dated March 18, 1986 stamped received by the N.J. Civil Service, (Judge Buck wrote (1) it was his decision to permanently abolish the position, Program Coordinator, Office on Aging and (2) that this position will not be filled. (Motion Brief, page 17 and Informal Appeal Brief, CA: 00—2122, page 10)

15. These incidents happened one year before the federal action was tried in March of 1987. Philip Lago for the (10th time) failed to file timely motion on ground of newly discovered evidence.

16. Instead of amending the federal action, Lago filed a separate State Action 38270-86 (P1. Exh: 19) against petitioner's demand and wishes that he withdraw his filing and instead to file an amendatory motion at the District Court to include issues he filed in the State Action (P1. Exh: 20) and in Motion Brief, pages 18—19; Informal Appeal Brief CA: 00-2122 page 10. No. 7 and No. 8, page 11. Thus for the eleventh (11) time Lago committed errors so gross and unjustifiable and severely neglected his legal obligations to petitioner.

17. The State Action 38270—86 was Pre-Tried on Nov. 10, 1988 before Superior Court Judge Carol Ferentz

where Lago testified under oath knowingly and falsely claimed

(a) he has insufficient information in 1985 to substantiate claims under the 1984 Certification and

(b) he was precluded in filing issues that arose out of the 1984 Certification by Judge Haneke's Pre-Trial Order (P1. Exh: 10) etc. (this Petition page 14 at No. 6 and 7 and page 12 No. 4 thru page 13 which is incorporated herein to avoid repetition.

All of these information were false and contrary to the record. As a result of his false claims and wrong filing in the State Superior Court, CA: 38270–86 was dismissed by Judge Ferentz on ground of res judicata.

The filing of the issues pertaining to the 1984 Certification, etc. at the Superior Court was another major error without any justification by Philip Lago and thus, for the twelfth (12) time, he committed errors so gross, negligence so severe and without justification. Motion Brief, pages 21-22, CA: 00-2122, Informal Appeal Brief, pages 12-13.

The errors and negligence by Philip Lago in failing to file timely motions to amend the federal action twelve (12) times can not be simply characterized as " simple failure to mention failure to appoint" (U.S. District Court Opinion, APPENDIX: B) in light of the intentional and knowingly false representation Lago made before Judge Carol Ferentz and his errors can not be simply characterized as "a mistake"; "an inadvertence".

Even though the U.S. Third Circuit Court characterized those errors and negligence by Philip Lago as" ordinary mistakes by a lawyer in a single case" (APPENDIX: A. page 5,line 6), Lago's errors and mistakes

and failure to file timely motions twelve (12) times in THIS SINGLE CASE are too many and extraordinary in the number of errors and failure to follow rules of federal procedures. Lago is a trained professional to practice law in the States of New Jersey and New York. Those errors and negligence were too many and might just well be the " negligence and complete and careless disregard of the clients rights amounting to leaving the client unrepresented mentioned by the Court in Cobos v. Adelphi University at 179 F.R.D. 381 (E.D. N.Y. 1988). In the Case of Bougher v. The Secretary of Health and Welfare, United States of America, 572 F 2d (3rd Circuit), Circuit Judge Clarkson Fisher held that Rule 60 (b) (6) motion may be granted for any reason justifying relief to accomplish justice where lawyer did not file timely motions and where records before the Court did not show "inadvertence" or "excusable neglect" In another Case, Juneau v. Alaska, 20 F.R.D. 407 (D. Alaska) the Court held that " gross negligence and abandoning of client is an "extraordinary circumstance permitting relief under Rule 60 (b) (6). "As the U.S. Third Circuit Court in APPENDIX: A said, in Sawka V. Healtheast, Inc. 989 F 2d 138, 140 (3rd. Cir. 1993) relief maybe granted under Rule 60 (b) (6) under "extraordinary circumstance" which without such relief unexpected hardship would occur.

IV. Petitioner's Response to the District Court and Third Circuit Court's Opinion that:

1(b) plaintiff motion is barred by the one-year statutory period under the Federal Rule of Civil Procedure 60 (b) (1) because 1(c) motion was not filed within a reasonable time

It was not possible to file Motion to Reinstate within one year after the March 1987 trial of Civil Action #83-3747 because of the following reasons:

A. The issues that arose out of the 1984 Civil Service Certification were pending at the State Superior Court in State Complaint #38270-86 filed by Lago against petitioner' objection. Many information that came to light during the Pre-Trial of November 1988 were not clear to petitioner until after she received copies of documents on file at the N.J. Superior Court in 1991.

Even after the N.J. Court Transcript of the Pre-Trial and other documents, she remained clueless on steps to do. She has no legal training. It took her years to trace the step by step procedures that Lago should have taken by reading for many years law books at the Rutgers' Law Library, Newark, New Jersey. It took many years since I was not able to travel daily to Newark due to the exorbitant transportation costs which I could hardly afford being unemployed with my residence 27 miles away with no public transportation available.

B. Petitioner also met difficulties with the District Court' filing and recording procedures of documents.

1. After the dismissal of the State Action 38270-86, petitioner immediately called the Clerk's Office of the District Court for copies of court transcripts and other documents. Petitioner was advised that other transcripts of proceedings were not available with the exception of transcript of my court testimonies because the court stenographer, Mr. Hennefeld did not transcribe and moved to London, address unknown.

2. Per advise by the District Court Clerk's Office, petitioner searched for documents in the basement of the U.S. District Court in Trenton, New Jersey where she was told records are kept until they were transferred to the archives in Philadelphia. The searched for documents in

Trenton, N.J. with the assistance of Ms. Kitty Chitty, Deputy Clerk of the District Court yielded a skeleton file.

3. Documents were requested by phone from the Philadelphia archives. It took months before petitioner was advised there were no documents on file about my Case.

4. The Philadelphia Office advised me to search the National Archives in Lee Summit, Missouri. I did but I could not describe what exactly I was looking for I was told to request the District Court for the Civil Docket Sheet of CA: 83-3747. I made two requests but got no response. On my third request, the Civil Docket Sheet was released on Dec. 4, 1998 (P1. Exh: 7)

5. As the Civil Docket Sheet (P1. Exh: 7) revealed;

a. petitioner filed a motion for access to trial transcript without costs on 1-13-89, N.R 115. This motion was denied.

b. petitioner tried again and filed a motion en forma pauperis for clarification of issues tried in March 1987 on 2-21-91. This Motion was denied on 4-12-91, NR 121.

Had these motions been granted petitioner would have some clues of what went wrong and how things went wrong with the civil action.

6. As the Civil Docket Sheet, CA: 87-3747 also revealed;

(a) the information given to petitioner by the Clerk' Office of the District Court that in 1988 was truthful that "there was no transcript on file in 1988 on my Case #83-3747.

(b) the transcript of 3-25-87 was not filed or entered in the District Court' record until 9-7-88 NP 112

which indicated a delay in filing and recording of eighteen (18) months from the end of trial in March of 1987.

(c) the court proceedings of 3-24-87 was not filed in the District Court' record until 11-09-88, NR 113 which indicated a delay of twenty (20) months

These unavailability of courts' transcripts due to the District Court' flawed recording system made it impossible for petitioner to discover clues to substantiate claims to be included in the motion to reinstate within one year.

7. The Federal Archives in Lee Summit, Missouri have on file many of the documents but not all of the documents. However, many of the documents that were released were enough to convince petitioner that "many steps taken by Philip Lago were highly irregular when compared to the step by step procedures spelled out in the Federal Rules of Appellate Civil Procedures and District Court Appellate Procedures.

C. The disappearance of Philip Lago from New Jersey further complicated petitioner's search for better clues. Lago had complete documentation of the District Court's proceedings as explained in the Motion Brief, pages 3, 4 and 5.

8. Years of reading law books at the Rutgers' University Law Library in Newark, N.J. gave this petitioner some courage and positive information and light at the end of the tunnel. Petitioner on October 15, 1999 filed Motion to Reinstate Civil Action 83-3747 pursuant to federal Rule of civil Procedure 60 (b) (6) seeking relief by explaining the "extraordinary circumstances" that led to this delayed filing and which is a reason that does not come within the other subdivision of Rule 60 (b) and as Rule 60 (b) (6) is broad and having no time limit. (Comment on Rule 60 (b) Survey and

Proposal for General Reforms, 60 Calif. Law Review, 531, 559–560 (1972)

Petitioner' Response to District Court Opinion No. 1 (c) Affirmed by the Third Circuit (APPENDIX:A)

Petitioner reiterates the explanation in IV 1(b) and 1 (c) about "extraordinary circumstances" behind this motion's delay in filing and further reiterates that "reasonableness" required under Rule 60 (b) (6) is dependent on the circumstances of the Case. 7 Moore Federal Practice, parag. 60.27 at (3) and whatever the precise construction of "reasonable time" may be, the Court in Acha v. Beame (1977) S.D.N.Y. 429 F. Supp. (CA: 2, N.Y) held, that Rule 60 (b) (6) Motion maybe presented after time of filing an appeal had expired.

V. Petitioner' Response to District Court's Opinion that pursuant to 60 (b) (6), the Court may relieve a party from the final judgment for any reason justifying relief from the operation of the judgment which require,

(a) a meritorious reason to be provided by the movant (APPENDIX: B, page 3 at lines 19–23) and,

(b) the movant to explain the gross negligence by showing of extraordinary circumstances (or) extreme hardship (APPENDIX: B, page 4, at lines 3–4)

In response to Opinion V (a) and (b), petitioner reiterates those explanations and exhibits submitted in the Motion Brief to Reinstate, CA: 83-3747 and in the Informal Appeal Brief, CA: 00-2122 pages 1-6 and in the petitioner' Reply Brief to the Defendants Opposition to Petitioner' Appeal to U.S. Third Circuit Court, CA: 00-2122 which she incorporates herein to avoid repetition.

1. those issues and claims submitted in the Motion to Reinstate, CA: 83-37 47 and in the Informal Appeal Brief, CA: 00-2122 were not presented to the District Court because Philip Lago failed and neglected to file timely motions to amend the federal action for twelve (12) times and therefore, those issues and defendants submitted in the Motion to Reinstate were not decided by the District Court in 1987.

2. that the defendants named in the Motion to Reinstate and in the Informal Appeal Brief, CA: 00—2122 did not deny and did not contest the correctness of petitioner's claims that (1) she was denied permanent appointment under the 1984 Civil Service Certification as a retaliation for her protected conduct and (b) the denial of permanent appointment was based on racial animus due to petitioner's race and national origin as illustrated by prima facie evidence of permanent appointments made by the defendants of "Black employees only" in 1984; 1985 and 1986.

3. that Philip Lago's failure to file timely motions to amend the federal action twelve (12) times while petitioner's Case was pending with the District Court foreclosed petitioner's right to a fair and full hearing of those claims submitted in the Motion Brief to Reinstate against those defendants named in the Motion and thus, foreclosed too, petitioner's civil and constitutional rights

4. the flawed recording procedures of the U.S. District Court in filing courts' record by a delay of 18 to 20 months crippled petitioner's attempt in researching much needed information that could have helped her file her motions in 1988 - 1989.

5. the denial twice (2) by the District Court of petitioner' motions for access to court transcripts and for clarification of issues decided in 1987, devastatingly and

totally disabled petitioner's research for information that would substantiate filing of motion to reinstate CA: 83-3747 in 1988 - 1989.

6. petitioner's lack of legal training which forced her to read complicated law books made her effort extremely difficult yet mentally and emotionally satisfying since those readings gave her the clues and courage to approach the Court system and to believe her time had not run out under the Federal Rule of Civil Procedure 60 (b) (6) which has no time limit.

Petitioner respectfully submits that the information submitted in the Motion to Reinstate CA: 83-3747 and in the Informal Appeal Brief, CA: 00-2122 as summarized herein are "meritorious reasons" and "extraordinary circumstances" that met the U.S. District Court' requirement that movant must provide in order for the Court to grant relief pursuant to Federal Rule of Civil procedure 60 (b) (6) for any reason justifying relief to accomplish justice as in the Case of Cobos vs. Adelphi University, 179 F.R.D. 381; 388 (E.D.N.Y, 1998) which held that gross errors and negligence are "meritorious reasons" (quoting United States v. Cirami, 563 F. 2d 26, 30 (2d Cir. 1977).

In the Case of Leon Bougher v. Secretary of Health and Welfare, United States of America, 572 F 2d (3rd Cir) Judge Clarkson Fisher held that gross neglect is abandoning of client by an attorney and further held that gross negligent and abandoning of client constitute an "extraordinary circumstance" permitting relief under Rule 60 (b) (6) Motion which should be granted to accomplish justice.

REASONS FOR GRANTING THE PETITION

1. The apparent unfair, flawed and irregular Judgment and Opinion of the U.S. Third Circuit Court (APPENDIX: A) in denying APPEAL, CA: 00-2122 by naming the wrong persons and agencies as defendants and then, deciding in their favors on issues that were not raised against them virtually left the claims of petitioner (a) about the gross errors and severe negligence of Philip Lago in failing to file timely motions to amend the federal action twelve (12) times unheard, unadjudicated, pursuant to Federal Rule of Civil Procedure 60 (b) (6) and thus warrant granting this Petition.

2. The apparent unfair, flawed and irregular Judgment and Opinion, (APPENDIX: A) by naming the wrong persons and agencies as defendants and deciding in their favor virtually left those claims against Judge Buck and Mr. Richard Proctor and the Newark Housing Authority (NRHA) for violating petitioner' civil and constitutional rights intact, unheard and unadjudicated and thus, a reason to grant this petition under Rule 60 (b) (6)

3. The U.S. Third Circuit Court (APPENDIX: A) Judgment and Opinion in denying petitioner's APPEAL, CA: 00-2122 in favor of wrong persons and agencies it wrongfully named as defendants and with whom petitioner had no claims against those persons under the denial of permanent appointment under the 1984 Certifications and civil rights and constitutional rights violations brought about by Philip Lago's gross errors and severe negligence showed a conflict with the U.S. Third Circuit Court's Opinion in Bougher vs. Secretary of Health and Welfare, United States of America, 577 f 2d (3rd Cir. 1978) and in the CASE of Sawka v. Healtheast, Inc. 989. F 2d 136,140 (3rd Cir.,. 1993) a reason for granting this Petition.

4. The U.S Third Circuit Court of Appeals in denying APPEAL, CA: 00–2122 pursuant to Federal Rule of Civil Procedure 60 (b) (6) exhibited conflict with decisions of other court of appeals such as in the Case of Cobos vs. Adelphi University, 179 F.R.D. at 288 (quoting the United States v. Cirami, 563 F 2d, 30 (2nd Cir. 1977) a reason to grant this Petition.

5. Whether the Judgment and Opinion of the U.S. Third Circuit (APPENDIX: A) is unfair, flawed, irregular and indicate abuse of discretion is an " exceptional circumstance" and " meritorious reason" to grant this Petition.

6. Whether the U.S. 3rd Circuit Court's Opinion and Judgment (APPENDIX: A, page 9, last 2 sentences) should be reversed and this Petition granted because:

(a) petitioner did not receive any documents, information and motion brief pertaining to Appellee's Motion To Supplement The Record

(b) therefore, petitioner was denied the right to know the content of Appellee's Motion To Supplement the Record

(c) further, petitioner was denied her right to respond to the Appellee's Motion and denied the right to be heard on issues or documents submitted by appellees.

Therefore, the 3rd Circuit Court's Opinion and Judgment is unfair, flawed, irregular and an "exceptional circumstance" and "meritorious reason" to grant this Petition.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Florida Gilman

Date: 1-19-2002

APPENDIX A (OPINION)
UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO- 00-2122

LEONIDA LIDMAN; WALTER LIDMAN,
Appellant,

V

BRENDA J. SMITH, Individually; BRENDA J. SMITH, Chief, Division of Family and Community Services, Newark Redevelopment and Housing Authority; DR. DANIEL BLUE, Individually; DR. DANIEL BLUE, Assistant Executive Director, Newark Redevelopment and Housing Authority; NEWARK REDEVELOPMENT AND HOUSING AUTHORITY; RICHARD PROCTOR, Individually; RICHARD PROCTOR, Chief, Personnel and Labor Relations, Newark Redevelopment and Housing Authority; HOWARD GOTLIEB, Former Director of Personnel, Newark Redevelopment and Housing Authority; BOARD OF COMMISSIONER, Newark Redevelopment

and Housing Authority; COMMISSIONER, New Jersey Civil Service Commission; CITY OF NEWARK; STATE OF NEW JERSEY

On Appeal From the United States District Court For the District of New Jersey
(D.C. Civ. No. 83-cv-03747)
District Judge: Honorable John W. Bissell

Submitted Under Third Circuit LAR 34.1(a) May 8,2001

Received and Filed
6-20-01 Clerk
Sig (s/_____)
Marcia M. Waldron, Clerk

Before: NYGAARD, McKEE, and STAPLETON, Circuit Judges

(Filed JUN 2 0 2001

OPINION

PER CURIAM

In 1983 appellant Leonida Lidman and her husband filed suit against her employer, the Housing Authority for the City of Newark and various officials, alleging discrimination. In an order entered on November 21, 1985, the District Court granted the motions for summary judgment of defendant Milton Buck and the Newark Housing Authority. The case went to trial against the remaining defendants. The court directed a verdict in favor of Richard Proctor and the jury found in favor of the remaining defendants. Judgment was entered in favor of the

defendants and against Lidman on May 20, 1987. No appeal was taken. In January 1989 Lidman filed a motion for transcripts at government expense, which the Magistrate Judge denied in May 1989.

On October 27, 1999, and thus- 12 years after final judgment in the matter, Lidman filed a pro se motion to vacate the judgment under Federal Rule of Civil Procedure 60(b). In her motion Lidman argued that the action should be reopened because her attorney was grossly negligent in his representation of her. Lidman alleged that he had failed to amend the complaint filed in 1983 to include allegations concerning a 1984 Civil Service Certification list and the defendants' refusal to appoint her pursuant to it.

The District Court later amended the judgment and entered a subsequent order in a matter unrelated to Lidman' claims.

This list would have shown that there were three certified eligible candidates for the position Lidman desired and that she ranked first among those three candidates.

Lidman says that she sent a certified letter to defendants Milton Buck and Richard Proctor upon learning of the list and expressed her interest in the position, but neither individual responded. She then asked her attorney to amend the complaint to include an allegation regarding this new development concerning Buck' and Proctor' refusal to appoint her pursuant to the list. Lidman believes that she lost her case against Buck on summary judgment and Proctor on a directed verdict as a result of her attorney' failure to make use of this additional injury.[2]

[2] Lidman explained further that her attorney did, however, make use of the 1984 Civil Service Certification list at trial during his direct examination of her.

Lidman was terminated from her employment in April 1987.

The District Court declined to reopen Lidman' case, denying her Rule 60(b) motion in an order entered on June 30, 2000. Because Lidman was alleging excusable neglect, the motion was properly brought pursuant to Rule 60(b)(1). As a Rule 60(b)(1) motion it was untimely because it had not been filed within one year of judgment. As a Rule 60(b)(6) motion it was untimely because the 12 year delay in filing the motion was unreasonable. The court would not credit Lidman' excuse that it took her 12 years to obtain trial transcripts. Finally, the court held that, even if the motion was not untimely under Rule 60(b)(6), Lidman, in alleging

negligence on the part of her attorney, had not shown any extraordinary circumstances warranting relief. Lidman appeals.

We will affirm. Lidman has devoted her brief to arguing the merits of her. underlying action in order to show that extraordinary circumstances do exist in her case. She has experienced extreme hardship she says in that she has been unable to have a career in a civil service position. She also contends that the delay in bringing the Rule 60(b) motion can be attributed to her difficulty in obtaining transcripts.

The general purpose of Rule 60(b), which provides for relief from judgments for various reasons, is to strike a proper balance between the conflicting principles that

litigation must be brought to an end and that justice must be done." Bougher v. Secretary of Health. Educ. & Welfare, *572* F.2d *976, 977* (3d.Cir. 1978). As explained by the District Court, a motion under Rule 60(b)(1) alleging excusable neglect on the part of an attorney must be brought not more than one year after the judgment was entered. See Fed- R. Civ. Pro. 60 (b). That leaves Rule 60(b)(6) as the only avenue for relief available to Lidman, but Rule 60(b)(6) motions must be brought within a reasonable time. Twelve years is just not reasonable where there is no newly discovered evidence nor an intervening change in the law.

Even if we were to find that Lidman' motion was filed within a reasonable time (and we do not), " under Rule 60(b)(6) may only be granted under extraordinary circumstances where, without such relief, an extreme and unexpected hardship would occur." Sawka v. Healthea5t

Inc. 989 F.2d 138, 140 (3d Cir- 1993). In Bougher, *572* F.2d at *977*, we found extraorduiary circumstances where the same attorney had failed to file a responsive pleading in a total of 52 *cases* involving claims for black lung benefits. Ordinary negligence on the part of an attorney in a single case, however, is not an extraordinary circumstance of the kind envisioned by Rule 60(b)(6), and thus Bougher does not control here. Moreover, the loss of civil service employment is not an extreme and unexpected hardship of the kind envisioned by Rule 60(b)(6).

We will affirm the order denying relief under Rule 60(b). The appellee' motion to supplement the record is granted.

APPENDIX A (JUDGMENT)

UNITED STATES COURT OF APPEALS FOR THE

THIRD CIRCUIT

NO. 00-2122

LEONIDA LIDMAN; WALTER LIDMAN,

Appellant,

V.

BRENDA J. SMITH, Individually; BRENDA J. SMITH, Chief, Division of Family and Community Services, Newark Redevelopment and Housing Authority; DR.. DANIEL BLUE, Individually; DR DANIEL BLUE, Assistant Executive Director, Newark Redevelopment and Housing Authority;

NEWARK REDEVELOPMENT AND HOUSING AUTHORITY; RICHARD PROCTOR, Individually; RICHARD PROCTOR, Chief, Personnel and Labor Relations, Newark Redevelopment and Housing Authority; HOWARD GOTLIEB, Former Director of Personnel Newark Redevelopment and Housing Authority; BOARD OF COMMISSIONER, Newark Redevelopment Housing Authority; COMMISSIONER, New Jersey Civil Service Commission; CITY OF NEWARK; STATE OF NEW JERSEY

On Appeal From the United States District Court

For the District of New Jersey

(D.C. Civ. No. 83-cv-03747)

District Judge: Honorable John W. Bissell

Submitted Under Third Circuit LAR 34.1(a)

May 8,2001

Before: NYGAARD, McKEE, and STAPLETON, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey. On consideration whereof it is now here ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on June 30,2000 be, and the same is, hereby affirmed.

Costs taxed against appellant. All of the above in accordance with the Opinion of the Court.

ATTEST:

Sig (s/_____)
Marcia M. Waldron, Clerk

DATED: June 20,2001

Certified as a true copy and issued in lieu of a formal mandate on July 12, 2001.

Teste:

Sig (s/_____)
Kathleen Browne, Clerk

Clerk, U.S. Court of Appeals
For the Third Circuit

APPENDIX A-1

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 United States Courthouse
601 Market Street
Philadelphia PA 19106-1790

Marica M. Waldron
Cleark

Telephone
267-299-4923

pacer. ca3 .uscourtS . gov

July 12, 2001

Mr. William T. Walsh, Clerk
United States District Court f or the District of New Jersey
50 Walnut Street
Martin Luther King, Jr., Federal Building & Courthouse
Newark, NJ 07101

RE: Docket No. *00-2122*
Lidman vs. Smith
D. C. CIV. No. 83-cv-03747
D. C. CIV. No. 83-cv3

Dear Mr. Walsh:

Enclosed is a certified copy of the judgment in the above entitled case(s), together with copy of the opinion. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

(X) We return herewith the certified record in the case(s).

Kindly acknowledge receipt for same on the enclosed copy of the letter.

Counsel are advised of the issuance of the mandate by copy of this letter. A copy of the certified judgment is also enclosed showing costs taxed, if any.

Very truly yours,
MARICA M. WALDRON
Clerk

Sig (s/_____)
Charlene Crisden

By: Charlene Crisden
Case Manager

Enclosure

Cc:
Leonida Lidman
Karimu F. Hill-Harvey, Esq.

APPENDIX A-1 (a)

UNITED STATES DISTRICT COURT
MARTIN LUTHER KING. JR.
FEDERAL BID & US. COURTHOUSE
50 WALNUT STREET
P.O. BOX 419
NEWARK, N.J. 07101-0419
CAMDEN OFFICE

William T. Walsh
Cleark

Camden Office
USPO & Courthouse
401 Market Street
Camden, NJ 08101

TRENTON OFFiCE
402 East State Street
P.O. Box 515
Trenton. N.J. 08603

REPLY TO: Newark
Date: July 17. 2001

Greenberg, Margolis, Ziegler &
Schwartz, P.A.
3 AADP Blvd. Suite 401
Roseland, New Jersey 07068

Re: Leonida Lidman, et al., v Brenda J. Smith, et al., Civil Action No. 83-3747(JWB); USCA No. 00-2122

Gentlemen:

The mandate on the opinion of the U.S. Court of Appeals for the Third Circuit was filed on July 17. 2001.

It is requested that an order on the mandate be drafted and forwarded to this office for submission to the Court.

The mandate ordered that the order of the District Court is affirmed. Costs taxed against the appellant /plaintiff and in favor of the appellees/defendants.

If you desire the appellate costs to become a judgment in this district, it will be necessary for you to write the Clerk of the U.S. Court of Appeals for the Third Circuit and request them to certify to this office the amount of said appellate costs as they did not insert the amount in the mandate.

Your order on the mandate should set forth the directions contained in the mandate.

Very truly yours,
William T. Walsh, Clerk

Sig (s/_____)
By: Dana Sledge
Deputy Clerk

Cc: Mrs. Leonida Lidman
12 Irwin Place
Hazlet, New Jersey 07730

APPENDIX A-1 (b)

UNITED STATES DISTRICT COURT
MARTIN LUTHER KING. JR.
FEDERAL BID & US. COURTHOUSE
50 WALNUT STREET
P.O. BOX 419
NEWARK, N.J. 07101-0419
CAMDEN OFFICE

William T. Walsh
Cleark

Camden Office
USPO & Courthouse
401 Market Street
Camden, NJ 08101

TRENTON OFFiCE
402 East State Street
P.O. Box 515
Trenton. N.J. 08603

REPkY TO: Newark
Date: July 17. 2001

Susan Barone, Esquire
Newark RedeVeloPment & Housing Authority
57 Sussex Avenue
Newark, New Jersey 07103

Re: Leonida Lidman, et al., v Brenda J. Smith, et al., Civil Action No. 83-3747(JWB) USCA No. 00-2122

Gentlemen:

The mandate on the opinion of the U.S. Court of Appeals for the Third Circuit was filed on July 17, 2001.

It is requested that an order on the mandate be drafted and forwarded to this office for submission to the Court.

The mandate ordered that the order of the District Court is affirmed. Costs taxed against the appellant/plaintiff and in favor of the appellees/defendants.

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Your order on the mandate should set forth the directions contained in the mandate.

Very truly yours,

WILLIAM T. WALSH, CLERK

Sig (s/_____)

By: Dana Sledge
Deputy Clerk

cc: Mrs. Leonida Lidman
12 Irwin Place
Hazlet, New Jersey 07730

APPENDIX A-1 (c)

UNITED STATES DISTRICT COURT
MARTIN LUTHER KING. JR.
FEDERAL BID & US. COURTHOUSE
50 WALNUT STREET
P.O. BOX 419
NEWARK, N.J. 07101-0419
CAMDEN OFFICE

William T. Walsh
Cleark

Camden Office
USPO & Courthouse
401 Market Street
Camden, NJ 08101

TRENTON OFFiCE
402 East State Street
P.O. Box 515
Trenton. N.J. 08603

REPkY TO: Newark
Date: July 17. 2001

Irwin I. Kimmelman, Esquire
Richard J. Hughes Justice Complex
25 Market Street - CN 085
Trenton, New Jersey 08625

Re: Leonida Lidman, et al., v Brenda J. Smith, et aL, Civil Action NO. 83-3747(JWB); U~CA No. 00-2122

Gentlemen:

The mandate on the opinion of the U.S. Court of Appeals for the Third Circuit was filed on July 17. 2001

It is requested that an order on the mandate be drafted and forwarded to this office for submission to the Court.

The mandate ordered that the order of the District Court is affirmed. Costs taxed against the appellant/plaintiff and in favor of the appellees/defendants.

If you desire the appellate costs to become a judgment in this district, it will be necessary for you to write the Clerk of the U.S. Court of Appeals for the Third Circuit and request them to certify to this office the amount of said appellate costs as they did not insert the amount in the mandate.

Your order on the mandate should set forth the directions contained in the mandate.

Very truly yours,

WILLIAM T. WALSH, CLERK

Sig (s/_____)

By: Dana Sledge
Deputy Clerk

cc: Mrs. Leonida Lidman
12 Irwin Place
Hazlet, New Jersey 07730

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LEONIDA LIDMAN,
Plaintiff,

v.

THE NEWARK REDEVELOPMENT
AND HOUSING AUTHORITY;
JUDGE MILTON BUCK, Executive Director, 1979–1989;
and MR. RICHARD PROCTOR, Director of Personnel,
1982–1988, in their official capacities,

Defendants.

Civil Action No. 83–3747
ORDER

For the reasons set forth in the Court' Opinion filed herewith,

It is on this 29th day of June, 2000,

ORDERED that plaintiff' motion to reinstate Civil Action No. 83-3747 be, and it hereby is, denied.

Sig (s/_____)
JOHN W. BISSELL
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LEONIDA LIDMAN,
Plaintiff,

V.

THE NEWARK REDEVELOPMENT
AND HOUSING AUTHORITY;
JUDGE MILTON BUCK, Executive
Director, 1979–1989; and MR. RICHARD PROCTOR,
Director of Personnel, 1982–1988, in their official capacities,
Defendants.

Civil Action No. 83–3747
OPINION

APPEARANCES:

LEONIDA LIDMAN, pro se
12 Irwin Place
Haziet, New Jersey 07730

OLIVER LOFTON, ESQUIRE
Litigation Administrator
Housing Authority of the City of Newark
57 Sussex Avenue
Newark, New Jersey 07103
(Attorney for Defendants)

BISSELL, District Judge

This matter comes before the Court on pro se movant Leonida Lidman' ("Lidman") motion to reinstate her case pursuant to Fed.

R. Civ. P. 60(b)(6). On October 11, 1983, Lidman filed a Complaint in this court against Brenda Smith, Daniel Blue, Richard Proctor, Howard Gottlieb and Milton Bruck (all of whom are and were officials of the Newark Redevelopment and Housing Authority ("NRHA"); the NRHA itself; the City of Newark; the State of New Jersey and the New Jersey Civil Service Commission ("NJCSC"). On December 12, 1984, Lidman filed an Amended Complaint, several counts of which were immediately dismissed by this Court. On November 21, 1985, this Court granted summary judgment dismissing defendants NRHA and Buck. On March 27, 1987, the jury rendered a verdict of no cause as to the remaining defendants Smith and Blue.

and Buck. On March 27, 1987, the jury rendered a verdict of no cause as to the remaining defendants Smith and Blue.

Movant Lidman presently moves to reinstate Civil Action No. 83–3747.

BACKGROUND

Lidman, a naturalized Filipino-American , was hired by the NHRA in 1979 on a provisional basis. Following an audit of her position in 1979 by the NJCSC, Lidman' title was classified as Program Coordinator, Office of Aging. Thereafter, Lidman sought a permanent appointment in 1982 and 1984, both times in response to a NJCSC publication of eligibility notice. Lidman was denied a permanent position on both occasions. On February 4, 1985, NRHA abolished the position of Program Coordinator, Office of Aging, and reclassified Lidman as a temporary social worker until her termination on April 28, 1987.

ANALYS IS

Lidman moves to reinstate her civil action pursuant to Federal Rule of Civil Procedure 60(b)(6). Lidman argues that her action should be reinstated because her former attorney, Phillip Lago, failed to mention in the Amended Complaint the NRHA' 1984 refusal to appoint Lidman as a permanent employee. According to Lidman, the NJCSC Promulgated a second Civil Service Certification for the Position of Program Coordinator, Office of Aging in August of 1984. Although Lidman expressed her interest in the Position to defendants Proctor and Buck, she did not receive a reply from them after two months. At that point, she notified Lago, who told her that he would include this incident in an Amended Complaint once the Court approved him as Lidman' new counsel. While Lago-was ultimately approved, there is no mention in the Amended

Complaint of the 1984 Civil Service Certification and the NRHA' failure to appoint Lidman. She argues that Lago's failure to mention the 1984 certification constituted serious neglect and gross error which effectively denied her a fair and full opportunity to present her claims. For the following reasons, the Court denies such relief.

Pursuant to Fed. R. Civ. P. 60(b)(6), the court may relieve a party from a final judgment for "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b) (6). Courts have interpreted this language to require a "meritorious reason" to be Provided by the movant. See Cobos v. Adelohi University, 179 F.R.D. 381, 388 (E.D.N.Y 1998); Consolidated Edison Co., 557 F. Supp. 468, 474-75 (S.D.N.Y. 1983). "Moreover, because the scope of Rule 60(b) (6) is potentially broad, relief is justifiable only where the movant shows circumstances [or] extreme

hardship."' Cobos, 179 F.R.D. at 288 (quoting United States v. Cirami, 563 F.2d 26, 30 (2d Cir. 1977)); see Helm v. Resolution Trust CorD., 84 F.3d. 874, 877 (7th Cir. 1996). Relief may not be granted under Rule 60(b) (6) where the grounds for such relief are available under another Rule 60(b). provision. See Cobos 179 F.R.D. at 388; Helm v. Resolution Trust Corn., 161 F.R.D. 347, 351 (N.D. Ill. 1995), aff'd. 84 F.3d 874 (1996). Accordingly, where a movant seeks relief due to "mistake, inadvertence, surprise or excusable neglect," Fed. R. Civ. P. 60(b)(1), he may not pursue relief under Rule 60(b) (6) as well. Finally, the decision whether to grant or deny a motion for relief from judgment is within the sound discretion of the district court. Helm, 84 F. 3d at 877; United States v Golden Elevator. Inn., 27 F.3d 301, 303 (7th Cir. 1994).

Initially, the Court is unpersuaded by Lidman's attempt to circumvent the statutory period of Rule 60(b)(1), by shoehorning her motion into Rule 60(b)(6). A motion brought under Rule 60(b) "shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." Fed. R. Civ. P. 60(b). [1] In this case, the gravamen of Lidman' motion is that her former attorney Lago, failed to mention the 1984 NJCSC Certification in the Amended Complaint. This omission was clearly a mistake under Rule 60(b)(1) and therefore should be governed by the one year statutory period. Because plaintiff failed to bring this motion until nearly 12 years after the final judgment was entered and the case closed, the instant motion to reinstate should be time-barred.

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[1] In this case, Lidman only seeks relief under Rule 60(b)(6), presumably because relief under Rule 60(b)(1) through (b)(3) wouldbe time-barred while Rules 60(b)(4) and (5) are inapplicable in this case.

Indeed, even if Rule 60(b) (1) were inapplicable, Lidman' s motion would nevertheless be time—barred because it was not brought within a reasonable time. As noted previously, Lidman brings this motion 12 years after the action was closed. The only proffered basis for her delay is that it took her until 1999 to obtain the available records and trial transcripts of her proceedings before this Court. This is simply not a reasonable explanation for a delay of this length. Even without formal legal training, it should not have taken Lidman more than a decade to procure the trial records. Whereas the recent discovery of new evidence or a change in the law may provide a sufficient justification for a particularly protracted delay, Lidman has not proffered any justifiable impediment to obtaining the record earlier, especially when " has not been a time since 1987 when (she] did not wonder what caused her loss in the federal action." (Lidman Br. at 2).

Moreover, even if the Court were to entertain her motion, Lidman has failed to proffer a sufficient basis for relief under Rule 60(b) (6). As mentioned above, relief may be granted only where the movant demonstrates "exceptional circumstances" or "extreme hardship." Lidman has demonstrated neither. Lidman has not shown that she has suffered any hardship as a result of the judgment or that she will suffer any hardship without the Court' intervention.

Finally, the Court observes that a case for attorney negligence or malpractice does not constitute the type of extraordinary circumstances warranting relief under Fed. R. Civ. P. 60(b) (6). Although the Third Circuit has not addressed the issue at any length, other circuits have discussed what types of attorney conduct could constitute extraordinary circumstances sufficient for relief under Rule 60(b) (6). As the Second Circuit has noted:

> It is well—settled that an attorney' neglect of a case will not provide the basis for a Rule 60(b) (6) motion. Even an attorney' gross negligence is not a basis for relief under Rule 60(b) (6) unless the gross negligence is explained by exceptional circumstances and the movant makes a showing of client diligence in the face of the attorney's negligence. ... Not surprisingly, Rule 60(b)6 does not afford relief for deliberate tactical decisions of a party.

Conbos, 179 F.R.D. at 388. Similarly, another court noted, "Littigants whose fall asleep at critical moments may seek relief from somnolent agents; inexcusable inattention to the ... does not justify putting the adversary to the continued expense and uncertainty of litigation." Golden Elevator, 27 F.3d at 303; see United States v. 7108 West Grand Avenue, 15 F.3d 632, 633 (7th Cir. 1994) ("Malpractice, gross or otherwise, may be a good reason to recover from the lawyer but does not justify prolonging litigation against the original adversary.") At this late stage, any recourse Lidman still

has, if any, is against her former attorney, and not the original defendants.

CONCLUSION

For the foregoing reasons, the Court determines that Lidman has failed to demonstrate a sufficient basis for relief under Fed. R. Civ. P. 60(b)(6). Accordingly, the Court denies her motion to reinstate Civil Action No. 83–3747.

Sig (s/_____)
JOHN W. BISSELL
United States District Judge

DATED: June 29th, 2000

APPENDIX C

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLEARK

WASHINGTON, DC 20543-0001

August 29, 2001

WILLIAM K. SUTER
Clerk of the Court

Area Code 202
479-3011

Leonida Lidman
12 Irwin Place
Hazlet, NJ 07730

Re: Leonida Lidman v. Brenda J. Smith, et al.

Dear Ms. Lidman:

The above entitled petition for writ of certiorari was postmarked August 27, 2001 and received August 29, 2001. The papers are returned for the following reason(s):

The Appendix to the petiond does not contain the following documents required by Rule 14.1 (i):

The opinion entered by the U.S. Court of Appeals must be appended dated June 20, 2001.

You must provide an original and 10 copies of your petition for a writ of certiorari and motion for leave to proceed in forma pauperis. Rule 12.2.

A copy of the corrected petition must be served on opposing counsel.

Please correct and resubmit as soon as possible. Unless the petion is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Your $300.00 check is herewith returned.

Sincerely,
William K. Suter Clerk
By:
Sig (s/_____)
Gail Johnson
(202) 479-3038

Enclosures

Supreme Court, U.S.
FILED
MAR 5 2002
CLERK

(2)

No. 01-1131

In the Supreme Court of the United States

LEONIDA LIDMAN,

Petitioner,

v.

BRENDA J. SMITH, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RESPONDENT HOUSING AUTHORITY OF THE CITY OF NEWARK BRIEF IN OPPOSITION TO LEONIDA LIDMAN'S PETITION FOR WRIT OF CERTIORARI

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10PP

QUESTION PRESENTED

1. Whether the United States Court of Appeals, 3rd Circuit erred in denying Petitioners appeal to reinstate Petitioner's case under F.R.C.P. 60 (b)(6)?

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RESPONDENT, HOUSING AUTHORITY OF THE CITY OF NEWARK'S BRIEF IN OPPOSITION TO LEONIDA LIDMAN'S PETITION FOR WRIT OF CERTIORARI

STATEMENT OF CASE

The Court of Appeals for the Third Circuit and District Court accurately set forth the pertinent facts related to Petitioner's claim. [Pet. App. pp. 3-7, 25-26].

SUMMARY OF ARGUMENT

This case contemplates the limits of F.R.C.P. 60(b)(6) under which Petitioner seeks to reinstate her case. Under the rule Petitioner must show extraordinary circumstance for relief under the rule. Ackerman v. United States, 340 U.S. 193. However, Petitioner has failed in her claim to exhibit extraordinary circumstance. Petitioner alleges gross negligence on the part of her attorney for omission of evidence she thought would have changed the outcome of the case in her District Court action in 1984. However, the record shows that it was not gross negligence, nor an omission on the part of her attorney, but the operation of state law that denied her claim that she was entitled to the position under state regulation. As a result, verdict and judgment was rendered in favor of Respondent in 1987 by the District Court, however Petitioner fails to except the judgement of the District Court.

REASONS FOR DENYING THE WRIT

ARGUMENT

I. LEONIDA LIDMAN HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT.

"Review on writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R.10. "A petition for a writ of certiorari will be granted only for compelling reasons." Id. Lidman has not presented any compelling reason for this Court to exercise discretionary jurisdiction over her appeal of the dismissal of her claim.

A. PETITIONER'S WRIT OF CERTIORARI SHOULD BE DENIED AS SHE HAS NOT SHOWN EXTRAORDINARY CIRCUMSTANCES FOR RELIEF REQUIRED BY RULE 60(b)(6)

Petitioner's claim bears no facts of extraordinary circumstances to reopen Petitioner's case. Ackerman v. United States, 340 U.S. 193, 71 S. Ct. 209, 95 L.Ed. 207 (1950). "Relief under Rule 60(b)(6) may only be granted under extraordinary circumstances where, without such relief, an extreme and unexpected hardship would occur." Sawka v. Healtheast Inc., 989 F.2d 138, 140 (3rd Cir. 1993). "[T]his requires that the petitioner make a more compelling showing of inequity or hardship than normally would be required to reopen a case under subsection (1) through (5)." Landano v. Rafferty 897 F. 2d 661, (3rd Cir. 1990). Specifically, "Rule

60(b)(6) is not intended as a means by which the time limitation of 60(b)(1-3) may be circumvented." In short, "Rule 60(b)(6) is available only in cases evidencing extraordinary circumstances, Ackerman v. United States at 202, and only when relief sought is based upon " any other reason" than a reason which would warrant relief under 60 (b)(1-5)." Strardley v. Cortez, 528 F. 2d 488, 494 (3rd Cir. 1975). Moreover, a application under Rule 60(b)(6) is subject to the reasonableness of the time period in which the motion is filed and must be viewed in light of the circumstances.

Petitioner claims she should be entitled to relief since allegedly her attorney's committed gross negligence for failing to include in the Amended Complaint in the District Court action in 1984, a Certification issued by the Civil Service for the permanent appointment of the position of Program Coordinator of the Office of Aging, for which at that time she qualified for. Additionally, she asserts that the certification lack of consideration or non-consideration in the Amended Complaint would have swayed the jury to believe that Respondent discriminated against her under 42 U.S.C. 1983 in denying Petitioner the position of Program Coordinator of the Office of Aging.

However, a simple omission or negligence by Petitioners attorney does not rise to the level of extraordinary circumstance, especially 12 years after the fact. Link v. Wabash Railroad Co., 370 U.S. 626, 633-634 (1962). Moreover, her failure to be appointed was a matter of state law, which gave Respondent discretion to appoint or

disappoint. Specifically, N.J.S.A. 11:10-6[1] conferred Respondent with the discretion of appointing an eligible candidate to the position or returning the certification incomplete to Civil Service if there were less than three (3) eligible candidates. At the time the position was under consideration there was not three (3) eligible candidates and Respondent in the exercise of its discretion, returned the Certification incomplete. As a consequence, Petitioner and for that matter any other employee that applied for the position was not appointed. The actions taken by Respondent regarding the disappointments were in no way discriminatory under 42 USC 1983 as she alleges but more or less in harmony with state law. In fact, the Certification from the Civil Service Petitioner claims was omitted in her Amended complaint as it was brought out at trial in the District Court in 1984 during direct examination of Petitioner. [Pet. App. pp 5.].

Even assuming arguendo, that Petitioner's allegations are true, it still would not have changed the outcome of the case since Respondent acted within its authority under N.J.S.A. 11:10-6 in denying Petitioner the position as noted by the District Courts in their opinion from the original trial in 1987. The jury also agreed by returning a verdict of "no cause" in May, 1987. [Pet. App. pp 26-27.] Thus, to reopen the case as Petitioners seeks to accomplish would neither further justice nor be justifiable. In fact, it would now prejudice Respondent as the individuals named, as Defendants are no longer employed at the Housing Authority. In light of the above, Petitioner's allegations of gross negligence on the

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[1] This statute is now found at N.J.S.A. 11A: 4-8.

part of her attorney may, if at all, only amount to simple error that would not have impacted upon the outcome of the case.

Petitioner's case simply does not rise to the level of established precedent showing extraordinary circumstances. Klapprott v. United States, 335 U.S. 601, 613-614 (1949) (holding incarceration and ill-health beyond petitioner's control effectively hobbled petitioner from timely responding warranting after four years vacation of default judgement), Boughner v. Secertary of Health and Welfare, 572 F. 2d 976, 3rd Cir. 1978, (holding gross negligence of petitioner's attorney for failure to file 52 responsive pleadings of clients and allowing claims to go unopposed, resulting in dismissals, warranted reopening the case), Landano v. Rafferty, 897 F. 2d 661, 3rd Cir. 1990, (holding prosecutorial misconduct may have contributed to false imprisonment warranting after thirteen years reopening the case). In view of the extraordinary length of the time (12 yrs.) that has elapsed from which the Petitioner has sought to reopen the within case and absent any exceptional circumstance, the District Court and Third Circuit Court of Appeals properly denied Petitioner's Motion to Reinstate.

CONCLUSION

In light of the foregoing reasons Plaintiff 's request for Certiorari should be denied and the judgement of the Third Circuit Court of Appeals affirmed.

Respectfully submitted,

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